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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Internally displaced persons

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57

Addendum

Profiles in displacement: Peru

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Introduction

1. Displacement in Peru has largely been the result of armed opposition which escalated into rampant terrorism in the 1980s. While it has for the most part now been suppressed and conditions of relative normalcy have made return possible for some internally displaced persons, some 600,000 people are still displaced. The need for their protection and assistance is becoming increasingly recognized as a matter of priority for the Government. Accordingly, at the invitation of the Government, the Representative of the Secretary-General undertook a mission to Peru from 12 to 25 August 1995. This report describes the programme of activities and the main findings of the mission as they relate to the context and the problem of displacement.

2. The mission was in many ways a model of the catalytic role into which the mandate has evolved since its creation in 1992. This role, essentially one of advocacy and awareness-raising, has been pursued not only through studies and periodic reports, but particularly through country visits and dialogue with Governments. During these country missions, the programme normally begins with a briefing by the UNDP Resident Representative, followed by meetings at the highest level of the government hierarchy, including the head of State and/or Government, relevant ministers, government officials with responsibilities for the internally displaced, representatives of specialized United Nations agencies and the donor community, human rights bodies and other non-governmental organizations, community leaders and representatives of the displaced population. These meetings are then followed by on-site visits to the displaced populations and dialogue with provincial and local authorities, including military commanders, civilian administrators, relief workers, local leaders and, of course, the displaced themselves. The third phase is one of de-briefing the local, provincial and national authorities as well as international agencies about the on-site visits, the findings and recommendations for remedial measures. Often, all these activities are accompanied by an intensive media coverage, the effect of which is to bring the problem to the fore, open it up for discussion, and make it a challenging subject for policy analysts and decision makers.

3. The Representative wishes to express his gratitude for the cooperation and assistance he received from the Government of Peru. In particular, he wishes to emphasize his appreciation for the interest displayed by the President of the Republic of Peru and the other members of the Government in his mission.

4. The Representative was received by President Alberto Fujimori Fujimori, the Ministers of Justice, Foreign Affairs, Interior and Defence, the Vice-Minister for Regional Development, the Director of the National Institute of Development, the Interministerial Coordinating Committee of the Proyecto de Apoyo para el Repoblamiento (PAR) and its secretariat, the President of Congress, the President of the Human Rights Commission of Congress, the Fiscal (Attorney-General) and Ambassador Javier Pérez de Cuéllar (leader of the Opposition). The Representative met with delegates of intergovernmental specialized agencies, and the staff of local and international non-governmental organizations (hereinafter NGOs) and members of the academic

community. He also met with church authorities and organizations. He had the opportunity to hold hearings with displaced persons and their organizations as well as other community and women's organizations.

5. The Representative also visited areas where internally displaced and returnee communities lived. More specifically, in the department of Ayacucho (zone 1) he visited San Felipe on the outskirts of Huamanga, a settlement of a few thousand displaced persons predominantly of the Iquichan ethnic group (Quechua-speakers), and San José de Secce and Huamanquilla, towns with significant numbers of returnee (i.e. formerly internally displaced) Andean populations (a few thousand). In the department of Junin (zone 4) he visited the Asháninka community of Poyeni, which sheltered many of the surrounding displaced Asháninka communities (approximately 1,500 persons); the displaced Asháninka community in San Ramón de Pangoa, hosted by Asháninka-Nomatsiguenga communities of San Martín and San Ramón de Pangoa (approximately 200); the Asháninka communities of Puerto Ocopa, where large returnee and displaced communities (numbering a few thousand) now live with the support of a Catholic mission; and the small returnee community of Caperucia. In the outskirts of Lima (zone 7) the Representative visited Huachipa where thousands of displaced persons of Andean origin live. During these visits, he met with displaced persons and returnees, grass-roots organizations, including ronderos (members of self-defence committees, discussed later), and other representatives and chiefs of those communities. He was also received by civilian government, military and police authorities, including the leadership of the political-military commands, commanders of the army and police bases, the office of the Fiscalia, the local PAR structure, church authorities and field representatives of international and local NGOs. Scheduled visits to some displaced and returnee communities regrettably had to be cancelled due to prohibitive weather conditions and other last-minute amendments in the Representative's programme of activities.

6. The present report, which is based primarily on information gathered during the mission, has also taken into account various sources of information, such as reports of the Government of Peru to the human rights treaty bodies, and the relevant summary records and comments of these bodies, reports by the special rapporteurs and other thematic mechanisms of the Commission, reports issued by intergovernmental agencies and (NGOs) on human rights and displacement issues, and a variety of other documents made available to the Representative during his mission, including personal testimonies and appeals.

7. The Representative endeavoured, within the short time available, to hear a variety of views on the complex situation of displacement in Peru from the different social, political, legal, religious and intellectual segments of Peruvian society.

I. THE CONTEXT

8. An analysis of the social, political and economic structures and the history of Peru is necessary for a deeper understanding of the history of displacement and its prospective solution. Forced displacement of almost a million people has been the result of a 15-year-long armed conflict between various armed opposition groups and the armed forces of Peru. A contributing

factor to the birth of the armed opposition, in turn, has been the existence of socio-economic disparities between different areas and socio-ethnic groups. As in earlier country profiles, this report attempts to highlight the most relevant issues.

A. Ethnic and socio-economic background

9. Peru is located in the central western part of South America and its coast extends along the Pacific Ocean. Peruvian territory is geographically complex, not only from a climatic standpoint, but also from the ecological and economic standpoints. Accessibility of certain regions, because of the lack of transportation infrastructure, is very limited. The Andes mountain chain creates three natural "strips" that run from the north of the country to the south: the coastal strip, the Sierra (the Andean mountains, frequently referred to also as the "highlands") and the selva (jungle). It is estimated that the total population is approximately 22,128,000. Apart from the Peruvians of European ancestry and the small number (3 or 4 per cent) of those of Asian or African ancestry, official sources 1/ distinguish between (a) the "indigenous communities" of Quechua and Aymara origin, living in the Sierra (in particular the departments of Cuzco, Puno, Apurimac, Ayacucho, Huancavelica, Junin and Pasco) and (b) the "native and peasant" communities (numbering a few hundred thousand), living in dispersed settlements in the selva (in the departments of Loreto, Junin, Ucayali, Amazonas, Cuzco and Madre de Dios), and representing some 55 ethno-linguistic groups belonging to over 12 linguistic families.

10. Ever since the Spanish conquered the territory of what is today Peru in the sixteenth century, the indigenous and native communities have suffered an inferior status. The Spanish and their descendants initially gained control over the Inca communities and their lands 2/ and subjected them to serfdom. After independence (28 July 1821), General San Martín abolished the tribute payments and labour services of the native communities and decreed that native people should enjoy the full rights of Peruvian citizens. Nevertheless, the non-Spanish population remained subordinate and perceived as inferior; their territories have always been marginalized and abandoned. The socio-economic indicators mentioned below show a clear pattern of historical discrimination, while derogatory terms used in particular for the Quechua-speaking populations have survived to this day. As for the members of the native communities of the selva, which retain many elements of their traditional living style, they are often still treated as third-class citizens.

11. It is estimated that between 1970 and 1990, the Peruvian population increased by 60 per cent, largely as a result of natural birth rate. The increase in the available labour force, however, was not matched by GDP growth. In the 1980s, the rate of growth of GDP was in fact negative. International investment stagnated. Salaries dropped significantly between 1973 and 1988 while unemployment and underemployment rose. Poor families became poorer as the economic structure deteriorated. The hardest hit were the poorest departments, such as Ayacucho, that had never benefited from international or local investment. One source noted that some areas in the southern Andes shared more characteristics with some "fourth world" countries in Africa than with the coastal cities of Peru. 3/

12. A principal cause of poverty is the shortage of fertile land. An estimated 37 per cent of the land is unusable for agricultural purposes and needs either large quantities of fertilizers or long periods of rest. In the Sierra, this problem is compounded by lack of modern technologies, high population density and, in some cases, unequal land distribution. In some areas of the selva, the highly acidic topsoil can be cultivated only by slash-and-burn techniques. In both cases, neither one-product cultivations that achieve economies of scale nor intensive cultivation is appropriate. In fact, they tend to increase the vulnerability of the peasants by creating higher dependence on the market prices of the crops or the necessary fertilizers.

13. To offset some of their subsistence problems, many poor families have migrated to urban centres, where they have become self-employed in the so-called informal sector. According to 1981 estimates, this sector of the monetized economy represented 60 per cent of the urban labour force. 4/ Nevertheless, since the expansion of the informal sector is affected by the same pressures as the formal, ultimately many of its members have seen their incomes decline. For the same reasons, coca-growing has become for many peasants in the rural areas their only means of subsistence; however, with the sharp drop in the price of coca, following the break-up of the Cali cartel, serious economic hardships and related conflicts are expected.

14. Since 1992, President Fujimori has taken severe austerity measures that reversed the negative growth and reduced inflation dramatically. While the immediate effects on the poorest segments of the society were negative because they entrenched extreme poverty, today it is generally acknowledged that the President's popularity is due largely to his economic policies. At the same time, the Government took certain measures for poverty alleviation, such as the creation of a social emergency fund (FONCODES). These, however, have been far from adequate in comparison to the actual needs.

15. Until the 1940s, roughly 65 per cent of Peru's population lived in the Andes. Today, only 29.6 per cent of the population is rural, while Lima's population has grown by 12 times. Urbanization has not been a result of industrialization, however, 5/ but rather of the precarious rural situation. The poorest departments - Ayacucho, Apurimac and Huancavelica - have sent most migrants to the cities and the selva. The first arrivals in the cities invaded empty lots and farm land and built rudimentary structures; today these areas constitute vast shantytowns, constantly expanding to accommodate new arrivals. It is estimated that 70 per cent of the metropolitan population of Lima lives in shantytowns.

B. The conflict and the pacification process

1. Shining Path and other armed opposition movements

16. Poverty and the abandonment of entire areas contributed to the birth of armed opposition in Peru. The Shining Path (Sendero Luminoso, or Communist Party of Peru), a strict Maoist political party, was founded by philosophy professor Abimael Guzmán in 1968 in Ayacucho's National University of San Cristóbal de Huamanga. It concentrated its activities in the countryside, starting first in the provincial universities and later creating "cells" among

local communities. Its leaders capitalized on the extreme poverty of the Ayacuchanos, caused by the serious shortage of fertile land and the economic imbalances in the country.

17. The Shining Path's first attacks occurred in 1980 and continued throughout the decade. The terrorist and indiscriminate nature of their attacks mirrors the preference of its leaders for violence over politics and its ideology of "total revolution", leading some observers to compare the movement to the Khmer Rouge of Cambodia. 6/ Soon, many of their initial supporters were alienated, especially with the introduction of attempts to institute collective farms, the forcible recruitment of young women and children, and "popular trials" of local officials.

18. In 1984 a second armed opposition group emerged, the Tupac Amaru Revolutionary Movement (MRTA). Unlike the Shining Path, the MRTA started its violent activities in urban centres before gaining control of certain rural areas in Junin, Pasco, Huanuco and San Martín. During the late 1980s the MRTA had lost control over parts of these areas to the Shining Path.

2. The armed conflict

19. It is now generally accepted that the State, when first confronted with armed opposition, initially neglected the problem because it affected only remote areas. In December 1982 the Government of Belaunde Terry (1980-1985) placed nine provinces under a state of emergency and entrusted control to a political-military command, which, in the words of one interviewee, operated as an occupation army. This not only did not stem armed opposition activity but gave rise to the first allegations of massive human rights violations committed by the military. The first two years of the Government of Alan Garcia (1985-1990) were hopeful: the military presence in the zones of emergency was restricted and fewer allegations were made. After 1988, however, the area of hostilities expanded significantly, as the armed dissidents escalated their terrorist activities in urban centres, while self-defence committees (discussed in detail below) became increasingly involved in counterinsurgency tactics. Civilians were caught in the cross-fire; the volume of denunciations and the numbers of the displaced spiralled upwards.

20. With the election of President Alberto Fujimori, the counter-subversive strategies were consolidated, including the organization of the rural population in self-defence committees under the control of the military, and the intensification of police and military control in marginal urban areas. Severe antiterrorist legislation and the activation of the central intelligence branch of the police facilitated the capture of the Shining Path leadership in September 1992 and a number of other major victories.

21. It is estimated that during the 14 years of war, 27,000 Peruvians were killed and almost a million were displaced. 7/ Political violence had detrimental effects on the agricultural economy, while many development projects, schools, health clinics and markets were destroyed. A government report estimates that the material losses amounted to US$ 21 billion, a figure equivalent to the entire foreign debt. 8/

22. Today, pockets of both the Shining Path and MRTA remain in some parts of the country 9/ and armed skirmishes, in particular in the coca-growing valleys and in some of the more isolated highlands, are still being reported. One particular faction of the Shining Path, led by "Feliciano", is thought to be among the strongest and most radical and to maintain bases in the Rio Mantaro and the Rio Apurimac valleys. Recent car bomb incidents in Lima, for example in May 1995, show that security is still fragile. While military operations have significantly diminished and security has improved considerably, active army officers are still in charge of the Interior and Defence Ministries that supervise the counterinsurgency operations. Local commanders remain the paramount authority in the emergency zones.

3. Rondas campesinas and self-defence committees

23. Peasants traditionally organized themselves in self-defence groups (rondas) to fight against cattle rustling. In the 1980s the military started providing official recognition and arming these groups in an effort to consolidate power in rural areas and to fight the armed opposition groups. It also started creating new groups (known as comités de autodefensa, self-defence committees). Some interviewees noted that in the past the security forces practically forced peasants to participate in the self-defence committees and that those who refused to participate were immediately suspect. Full military authority over both the rondas and the self-defence committees was conferred on the army in early 1993. 10/ One NGO estimate places the current number of ronderos at over 100,000; in Ayacucho alone there are 35,000 ronderos and the Political-Military Command was at the time of the mission about to recognize a substantial number of new self-defence committees, some of which belong to returnees. In all the communities the Representative visited, a number of ronderos were present. For the most part they had no uniforms and were lightly armed, sometimes with traditional weapons.

24. In many instances, in particular in isolated areas and native communities in the selva, the self-defence committees have been the only source of security and the main fighting force against the armed opposition groups. On the other hand, a number of problems have become apparent: the necessity of organizing in self-defence committees has disrupted subsistence activities. In addition, self-defence committees have occasionally been involved in illegal activities, including drug trafficking, or they have used their arms to settle personal disputes. In some cases they have become the nucleus of the communities, militarizing social life and assuming leadership. 11/ Some Ashaninka rondas also complained that they were not being recognized on the same footing as the self-defence committees of the colonos.

4. Recent political developments

25. On 5 April 1992 President Fujimori, with the full backing of the Armed Forces Joint Command, dissolved Congress, suspended the Political Constitution of 1979 and set up an emergency Government. From then until the end of 1992, the President and the Council of Ministers ruled the country through Decree Laws which included wide-ranging antiterrorism decrees that allowed for summary proceedings against persons accused of terrorism and treason.

Furthermore, the President suspended civilian courts and removed from office the members of the Tribunal of Constitutional Guarantees, Supreme Court judges, the Attorney-General and other judges and members of the judiciary.

26. In December 1992 the Democratic Constituent Congress (Congreso Constituyente Democrático) was inaugurated: it approved a law confirming the constitutionality of the President and the continued applicability of all laws enacted by him, as well as a motion that the Peruvian State did not have a policy of systematically violating human rights. It also established a Commission on Human Rights and Pacification. The Congress promulgated a new Constitution which was ratified by a referendum on 27 December 1993.

27. In the general elections of 9 April 1995, President Fujimori won a clear majority over his rival, former United Nations Secretary-General Javier Pérez de Cuéllar. Published sources and interviewees suggested that his success in combating the Shining Path and lowering inflation accounted for his re-election, despite the 1992 self-coup and his authoritarian governance.

5. The 1993 Constitution 12/

28. The Constitution of 1993 provides that the Government is unitary, representative and decentralized and shall be organized in accordance with the principle of the separation of powers. The Executive is composed of the President and two Vice-Presidents of the Republic and the Council of Ministers. The President has, inter alia, the power to order extraordinary measures, by means of emergency decrees having force of law, on economic and financial matters, and whenever required by the national interest, with responsibility for reporting to Congress.

29. According to the letter of the Constitution, legislative authority lies with Congress, while the judiciary is made up of jurisdictional organs determined by the Constitution. The State guarantees to judges their independence and permanency of tenure. The Constitution grants certain judicial powers, for the purposes of the execution of their customary law, to the rural and native communities.

30. There appears, however, to be a discrepancy between the provisions of the Constitution and the practice. It seems that some of these constitutional provisions have not been implemented. There is general acknowledgement that the President and the legislature interfere with the judiciary and that the Government remains heavily centralized and bureaucratic. The state of the judicial system is a cause of concern for all Peruvians, including the leadership of the country.

C. The human rights dimension

1. International instruments

31. Peru has pledged to protect and promote the human rights of its citizens, as reflected in its ratification of a number of international human rights instruments. The extent to which Peru complies with this commitment has

direct relevance to the issue of displacement, since it influences both whether displacement occurs and whether the persons already displaced can return to their homes.

32. Peru has signed and ratified, inter alia, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 1977 and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. There has been no official declaration as to the application of international humanitarian law to the conflict since 1980. Nevertheless, where the requirements for its application are fulfilled, in particular in the emergency zones, common article 3 of the Geneva Conventions and Additional Protocol II should be enforced.

33. The Peruvian Constitution of 1993 incorporates many provisions protecting human rights, and by virtue of article 55 gives domestic legal force to international instruments ratified by Peru (not constitutional force, however, as did the previous constitutions). By virtue of the fourth transitory provision of the Constitution, human rights provisions are to be interpreted in the light of the Universal Declaration of Human Rights and the other international human rights instruments. According to a recent official report, "the laws of Peru establish comprehensive protection of human rights. Dual protection is provided, nationally and internationally, inasmuch as Peru has ratified virtually all the international human rights instruments and is subject to monitoring by the various supervisory bodies, such as the Inter-American Commission on Human Rights and the United Nations Human Rights Committee." 13/ The new Constitution's first provisions relate to the fundamental rights of the individual, its first article stipulating: "The defence of the individual and respect for his dignity constitute the supreme purpose of society and the State." In addition, the Government has on several occasions stated that it has no policy of violating human rights and that it is committed to their protection.

34. Despite these international and constitutional guarantees, Peru has been the object of criticism for its human rights record for the past 15 years. The main themes are discussed in the following paragraphs. 14/

2. State of emergency and anti-terrorist procedures

35. Commentators have been claiming for years that the most serious human rights violations have occurred, and are still occurring, in emergency zones. 15/ A state of emergency was declared for the first time in 1981 and is currently in force in many parts of the country. 16/ As soon as the military assumed the direction of the counterinsurgency war in 1982, thousands of people were "disappeared", massacred, raped or tortured, in actions carried out by military and police forces. These appear to have been based on strategies seeking to erase the threat of "communism", but at the same time were underpinned by racism and contemptuous attitudes. Forcible conscription

by the military in rural areas is thought to be still going on and it is estimated that 4,000 minors form part of the self-defence committees. In the emergency zones the functioning of the judiciary seems to be particularly restrained and the possibility of obtaining an effective remedy practically non-existent. This creates a vacuum that is filled by the "law" of either the self-defence committees, the armed opposition groups or the military authorities.

36. While under both the 1979 and the 1993 constitutions the declaration of a state of emergency does not suspend the exercise of habeas corpus 17/ or amparo 18/ proceedings, in practice these proceedings were rendered ineffective. During the days following the 1992 coup d'état the entire judicial system was brought to a halt and the right to habeas corpus was practically suspended. The judiciary has regained neither its permanent tenure nor its independence.

37. In addition, the Government of President Fujimori resorted to antiterrorist substantive and procedural legislation for two types of offences: ordinary terrorist offences and the offence of treason. Those charged with treason, even civilians, are tried by military "faceless courts". 19/ Civilians accused of terrorism are tried by civilian "faceless courts". As of October 1995 this practice was scheduled to ease, although a new law has postponed this effect for one more year. 20/ Military courts also try officers of the armed forces when they are accused of having violated human rights, even though, in principle, common crimes fall under the jurisdiction of civilian courts.

38. One particular decree, the so-called "repentance law" (No. 25499), repealed in November 1994, allowed for anyone, except armed opposition leaders, to "clear their past" by "repenting" and "cooperating" with the authorities. This resulted in the unfair implication of numerous civilians, as many as 3,000, in terrorism cases, through denunciations by those eager to absolve themselves. Many requisitoriados, as those who have pending cases against them are known, are displaced persons. 21/

39. These procedures have given rise to severe criticism of the Government for not conforming with fair trial standards and for permitting the unjustified arrest, conviction and prolonged detention of civilians, and for applying different standards to army officers, who have very rarely been prosecuted, tried, and sentenced for crimes.

40. Peruvian human rights NGOs recognize that political violence, including extrajudicial executions and disappearances, has decreased significantly since 1993. Nevertheless, violations of the right to life by law enforcement personnel and members of the self-defence committees have been reported. 22/ Arbitrary detention of persons suspected of "subversion" and "terrorism" continue to occur, 23/ and there are fears that in such cases torture is being widely used, 24/ in violation of constitutional and procedural guarantees. 25/ Minors have reportedly also been subject to such procedures. 26/ Government leaders, while expressing sympathy for some of these concerns, dismiss others and point out that the critics are interested in defending the human rights of terrorists without regard for the welfare of the rest of the population.

41. Generalized statements by the leadership of the State, implying that human rights monitors, journalists, academics, political activists, environmental activists, defence lawyers, NGOs and social leaders are implicated with "terrorists", have increased greatly the chances that such persons may be unfairly prosecuted and condemned or otherwise persecuted. 27/ Persons with whom the Representative spoke mentioned that those who raised human rights issues continued to be harassed and that people are effectively being silenced. 28/

42. Officials stressed the role of the Office of the Attorney-General (Fiscalia) in protecting human rights, in particular through its computerized registry of detainees, and its power to visit police stations and military bases to verify the situation of the detainees. They also mentioned the importance of the role of the Ombudsman, an institution created by the 1993 Constitution, whose legal framework has been defined in Legislative Decree No. 52, passed in August 1995.

43. However, members of the Government and other officials, including the President, observed that the judicial system had always been corrupt and inefficient and that that situation had not changed. The sheer backlog of cases pending in the courts accounts for lengthy detentions and the unfair treatment of many innocent citizens. 29/ The Fiscalia appears to have limited powers and capacity, as observed in the case of one woman interned in Cimbote and awaiting trial for more than a year on what seemed a patently false charge. Furthermore, it appears that judges are not encouraged to act independently. For instance, judges who take it upon themselves to enforce human rights law risk prosecution. 30/

3. Economic, social and cultural rights 31/

44. As mentioned earlier, large segments of the population live in varying degrees of poverty, in particular in the interior of the country. Encouragingly, certain indicators show improvements over the past five years: for instance, hyperinflation that was over 7,000 per cent was at 15 per cent at the time of the visit, and the negative growth of the 1980s was a positive growth of 12 per cent. Unemployment and underemployment, however, have soared because of the downsizing of the public sector and the lack of absorption by the private sector. It is estimated that, in real terms, per capita GDP is equal to that of 1961. 32/

45. The disparities between urban and rural areas in the enjoyment of economic, social and cultural rights are striking. For instance, while there are 18,707 health workers (doctors and nurses) in Lima, there are only 1,268 in Junin and 315 in Ayacucho, to mention two of the departments the Representative visited. 33/ Insufficient health care in some departments has resulted in the persistence, if not increase, of cholera, tuberculosis, and other infectious and parasitic diseases.

46. Infant mortality rates have improved significantly, although they remain high in the central Sierra. It is estimated that 60 per cent of all families in these areas 34/ have between six and nine children. One result of this

situation is that currently, 37.6 per cent of the population are minors: this group has increased by 2 million in the past 20 years, making demand for food, health services and education even more critical.

47. The illiteracy rate in Peru has decreased from 58 per cent in 1940 to 18 per cent in 1981. Nevertheless, as pointed out by NGOs and supported by a government report, 35/ illiteracy has not decreased in the departments of Ayacucho, Huancavelica, Cuzco and Puno, where most of the population are Quechua speakers. For the past six years some Ashaninka communities have received no education at all. Also, women are disproportionately illiterate, particularly in the rural areas. 36/

48. Despite the fact that 5 million Peruvians speak Quechua, it is not an official language. The resulting constraints in accessing State mechanisms, including the judicial system, have been pointed out by the Fiscal: it is sometimes difficult to find interpreters, let alone judges and public attorneys who speak Quechua. Similar problems exist with regard to the other languages. No policies exist on bilingual education. As a result, children grow up being taught only in Spanish and parents avoid speaking to their children in their mother tongue, since the use of indigenous languages is frequently ridiculed. Women speak Spanish less frequently than men and for this reason suffer disproportionate discrimination in their encounters with the authorities or when searching for work, including domestic work and petty trading.

49. The Government has introduced certain social welfare projects to counterbalance the effects of structural adjustment and is now making efforts to improve the living conditions in the rural and marginalized areas by ameliorating its transportation and communications infrastructure and building schools and health centres. The Representative was in a position to appreciate first-hand the manner in which the President has personally taken the lead in this effort to reach out to those segments of the population that were for centuries abandoned at best and exploited at worst. Officials stressed that now that pacification has been achieved, development was the next task of the Government, and that the Government's political will to address the needs of the citizens was firm. They emphasized, however, that the Government's resources were not sufficient. 37/

50. Leaders of civil society and NGOs mentioned that frequently what had been pledged by the central Government did not reach the communities; this was attributed to a heavy bureaucratic structure and centralist attitudes that contributed to corruption and general mismanagement. They also mentioned that the Government's measures were for the most part sporadic and populist in nature. 38/

4. Consequences of armed opposition activities for the enjoyment of human rights

51. International law applies only in certain limited instances to non-State actors, such as insurgents, and establishes individual responsibility only for certain war crimes and crimes against humanity, as well as certain violations

of international humanitarian law, in particular of common article 3 of the Geneva Conventions of 1949 and Protocol II additional to the Geneva Conventions.

52. Amnesty International has observed the Shining Path's opposition to the concept of human rights, which it (the Shining Path) labels reactionary, counter-revolutionary, bourgeois rights, that are the weapons of revisionists and imperialists. 39/

53. As local and international human rights NGOs have repeatedly observed, the Shining Path is generally considered to be alone among Latin American guerrilla groups in its ferocious treatment of the population whose interests it claims to promote. Its members have been responsible for numerous massacres; its leaders are known to target communities who have refused to take sides, or who have joined (voluntarily or not) civil defence patrols. Community leaders have been executed after being summarily "tried" in "popular trials". Villages have reportedly been burnt to the ground, and the inhabitants, including women and children, tortured and brutally killed. 40/ Sexual violations have also been reported. Forcible recruitment is still practised and it is estimated that 1,000 minors are attached to subversive groups. Attacks against security forces and civilians by the Shining Path and the MRTA continue to be reported, particularly in the central selva. 41/ The treatment the Shining Path has accorded to the Ashaninka and other native communities has been particularly harsh. Entire communities were forcibly relocated, or were placed under conditions of virtual slavery. 42/ In the province of Satipo the Shining Path caused intra-ethnic and intra-tribal conflicts and managed to divide some of the communities: in the words of a community worker, there were times when people were either "Ashaninka-senderos or Ashaninka-ronderos".

54. Between 1988 and 1992 the Shining Path became increasingly active in metropolitan Lima. It spread terror among the population with several attacks, including car bombs, that caused heavy casualties, and killings of its opponents in the shantytowns. 43/

55. The Government has labelled all members of the Shining Path and the MRTA as terrorists and continues its relentless efforts to track them down and eradicate the movements. This strategy is publicly supported by many members of the civil society; privately, however, some point out that the Shining Path rose out of the structural problems of the country and that the merciless treatment of those suspected of being affiliated with it is frequently unfair. Although the Government, especially in the person of the President, appears to be reaching out to the poor and the marginalized communities there is no willingness to recognize the link between rebel violence and the structural problems and inequities of the system.

5. The "amnesty laws"

56. Congress recently promulgated two laws, 26479 of 14 June 1995 and 26492 of 2 July 1995, collectively known as amnesty laws, which (a) grant general amnesty to staff of the security forces implicated, or even already tried and sentenced, for acts related to the fight against terrorism since 1980; and (b) prohibit judges from declaring the law unconstitutional. These

two laws have been heavily criticized by international human rights mechanisms 44/ and the local human rights community for entrenching impunity and for impairing the rule of law and the principle of equality of all citizens before the law, and for undermining the independence of the judiciary.

57. The Representative raised this issue with practically all of his interlocutors, seeking to understand the thinking of the Government behind the law, while at the same time reiterating the concerns expressed by his colleagues of the Commission on Human Rights. 45/ The President, in particular, expressed his understanding for this critique of the amnesty laws, which guarantee the release of approximately 60 members of the security forces already accused of or charged with human rights violations. Nevertheless, he stated that the law was justified by the need for reconciliation, and the psychological situation of individuals in the army and the police who had experienced the horrors of the war. He claimed that such amnesty laws had contributed to reconciliation in other countries and were in line with previous actions by the Government to provide pardon to 5,000 terrorists (through the "repentance law"). 46/ The President noted that no one had criticized this pardoning of the terrorists. In this connection he expressed his mistrust for the human rights and other international organizations who, during the first 12 years of the war, he asserted, never denounced the brutality of the Shining Path but were always keen to defend the "human rights" of the terrorists. These arguments, which were reiterated by most government officials, overlook the wide condemnation of the rampant violence which the armed opposition movement inflicted upon the civilian population (see paras. 51-54 above).

58. Others with whom the Representative met pointed out that in the long run the amnesty laws did not contribute to reconciliation. They were not blanket amnesties for the entire population as amnesty laws are usually understood to be but benefited specific individuals in the military; the "repentance law", in the meantime repealed, did not automatically grant amnesty to those suspected of, or sentenced for, terrorism, but required them to "prove" their repentance through questionable means; it did not apply to the leaders of the armed opposition groups. Polls conducted at the time of the visit estimated that 66 per cent of the population were opposed to the amnesty laws.

59. Aside from all of the legal and moral arguments that can be invoked against the amnesty laws, all measures that tolerate human rights violations and encourage a climate of insecurity impair efforts to bring peace and discourage the displaced to return to their areas of origin.

II. THE INTERNALLY DISPLACED

A. Estimated number, zones and phases of displacement

60. Displacement in Peru is a direct consequence of the conflict, the poverty and the ethnic divisions, and a disrespect for human rights. The poorest and most violent departments, Ayacucho, Huancavelica and Apurimac, as well as the selva of the Rio Ene and the Rio Huallaga valleys (see map at annex), 47/ are those from which people fled in the greatest numbers. 48/ There seems to be a general consensus that there are several hundred thousand internally

displaced persons. The most commonly quoted figure is 600,000, although some believe it may be as high as 1 million. 49/ Most are women and children. 50/ According to official sources 51/ 54 per cent of the persons displaced during the last 12 years have moved within their department, while the rest have moved elsewhere.

61. Today, the internally displaced are more willing to identify themselves as such. Previously, they avoided being singled out for fear that they would be suspected by both the army and the armed opposition as having "deserted" and joined the "opposite camp". They are more inclined to say where they come from, especially when they might benefit from programmes designed to address their needs. 52/ NGOs working with internally displaced persons in the cities have been able to "map" the most significant concentrations.

62. As mentioned previously, rural to urban migration and to the selva due to the poverty and marginalization of the rural areas has been extensive in the last 50 years. Increasingly however, especially after 1980, many of the persons who moved did so not only because of the poverty but were compelled to because of the violence and persecution they were facing. In the conflict zones large areas were depopulated and villages and settlements were at best abandoned, and at worst razed to the ground. In the Sierra, the displaced have tended to move first to areas near their communities or to the provincial capitals, and as a last resort to the capital. In the selva they have tended to gather around larger communities. Those with relatives in the cities were among the first to arrive in the shanty towns, creating clusters of families of the same geographical origin. Today, one observes entire neighbourhoods that have maintained many of the customs and community structures of the native regions of their inhabitants.

63. There are seven main zones of displacement (see map at annex): 53/

(a) The departments of Ayacucho, Huancavelica and Apurimac, in particular the northern provinces of Ayacucho (zone 1): these were highly conflictive areas, while at the same time among the poorest in the country. Ayacucho in particular was the epicentre of violence and the department in which most displacement occurred. People have fled to the provincial capitals of Huamanga, Huancayo, Huancavelica and Ica, or to Lima. At present, most of these areas are relatively peaceful, although pockets of armed dissidents are still present;

(b) The Alto Huallaga valley (zone 2): currently, this is one of the most dangerous areas, due to the infiltration of the Shining Path and its increasing control over coca-trafficking. Displacement affects mostly small land-holders and traders. It is estimated that 70 per cent of all displaced from that area have left their homes in the last two years;

(c) The Valley of the Río Mantaro and the zone of Viscatán (zone 3): for a period of time, this zone was under the virtual command of the armed dissidents. One Shining Path faction still retains a presence. Forced migrations to Huancayo began in 1988 and still continue, although to a lesser extent;

(d) The Valleys of the Río Ene and the Río Tambo (zone 4): populated by native peoples, in particular the Ashaninkas, this area of the selva came under the control of the Shining Path who practically enslaved the population. Those who managed to escape (approximately 5,000) gathered around the communities that had been able to defend themselves (such as Poyeni), or fled to Huancayo and even Lima;

(e) The so-called corredor norte, which includes areas of various departments in the north of the country (zone 5);

(f) The corredor sur-andino, which covers areas of the Cuzco and Puno departments (zone 6);

(g) Lima, and some areas north of the department of Lima (zone 7), where subversive and countersubversive activity was frequent in the last few years of the conflict.

64. In each of these areas there are different "scenarios" of displacement. The protection needs of the displaced and returning communities, as well as needs associated with shelter, food and health, vary from region to region and require specific approaches. 54/

65. Until 1986 most of the displaced came from the southern highlands (zone (1)) and were peasants from isolated villages. Some were also town-dwellers and professionals from small towns. After 1986, violence spread to a much wider area displacing people from a variety of ethnic and geographic background.

66. The capture of Guzmán in 1992 and the general weakening of the Shining Path, as well as intolerable living conditions in some receiving cities, have encouraged many people to return to their areas of origin or to start making plans to that effect. Those most willing to return have been persons who remained closer to their homes or left them only recently. Most returns are taking place in the departments of Ayacucho and Huancavelica, and to a lesser extent in Apurimac and Junin. The Representative visited communities of returnees both in Ayacucho and in Junin, and noted their satisfaction with having returned; he also observed, however, their apprehension with regard to their future, in particular the precariousness of their security and economic welfare.

B. Issues relating to the human rights of the displaced

1. Equality and non-discrimination

67. According to official sources, 70 per cent of all internally displaced persons in Peru belong to the indigenous and native communities of the country. 55/ These communities have been traditionally disadvantaged in Peru and, according to the Committee on the Elimination of Racial Discrimination, their social conditions have not improved in the last years. For the displaced who have taken refuge in the cities, such prejudices mean even greater social marginalization, since the environment is alien and the language spoken is not one in which they are fluent. Very little integration takes place in the cities, as most of the displaced and the migrants from the

rural areas live in the shanty towns. 56/ In addition, the displaced peasants from the "red zones" have been prime suspects of terrorism for the police while, when the Shining Path was active in Lima, they were suspected by the armed dissidents of being government sympathizers as well. The native communities in the selva that the Representative visited were particularly bitter about the State's disinterest: the chief of one displaced community deplored the fact that while the Government has called them to fight the Shining Path, it had no interest in getting to know them and their customs, did not encourage education in, and use of, their language, and only supported the Spanish-speaking colonos.

68. Women suffer even more from marginalization and discrimination, especially in finding employment, in particular because they usually have no education and no command of Spanish. One study undertaken in a Lima slum showed, for instance, that 89 per cent of the displaced who were completely illiterate were women. 57/ Most of these women remain isolated in the shanty towns. 58/ NGOs providing assistance to the displaced note that the cultural barriers between them and the displaced women are hard to break, making it difficult to provide psychosocial support.

2. Life and personal security

69. With the reduction in armed opposition activity, the displaced generally enjoy greater security, both in their areas of refuge and in their areas of origin (if they return). Concerns remain, however, about life and personal security, mostly relating to occasional cases of abuse of authority by the security forces or the self-defence committees, the ongoing killings and other abuses by the Shining Path, and the high incidence of domestic violence.

70. Many persons still remain unaccounted for, in particular those who were forcibly recruited by the armed opposition groups. In the central selva, entire communities disappeared. 59/ Many persons have recently reappeared, after escaping from the Shining Path or after being "retrieved" by the rondas. These so-called recuperados return in a deplorable state of physical and mental health and relate stories of servitude and inhuman treatment at the hands of the Shining Path. Nevertheless, many are perceived as "repented terrorists". Also, there remain outstanding cases of persons "disappeared" during the war; the Representative met with a number of persons in Ayacucho whose relatives have been "disappeared", and who have been unable to find out what has happened to them since the early 1980s. They said that initial investigations implicating the military had been blocked and that the prosecutor handling them had fled the country.

71. Since the beginning of the war, women have been perceived as "less useful" or "dangerous" by the agents of violence. On the other hand, many women have been in the forefront of the fight for better protection of the human rights of their husbands, sons or daughters, and many have had to pay dearly for this. 60/ Information received by the Representative indicates that in areas of refuge, women are continuously exposed to abuse and sexual aggression. 61/ During the first decade of the conflict both sides to the conflict raped and abused women during incursions in the emergency zones or during detentions and interrogations. 62/ In some areas, women who work in the fields still face significant security risks. Women belonging to

indigenous and native communities, human rights activists, members of teachers' or students' unions and leaders of displaced communities are at high risk of being targeted and victimized by both sides to the conflict.

72. Domestic violence among displaced and returnee families was routinely mentioned as a problem during the Representative's visit, even though the topic is extremely sensitive among the indigenous and peasant communities. Women attributed such violence to the unemployment of their husbands and to alcoholism. Alcoholism and violence among children are becoming increasingly evident; of particular concern is the extremely aggressive behaviour of minors who were forcibly recruited by the armed opposition groups or the self-defence committees.

73. Rape and domestic violence were, and continue to be, chronic problems. However, there have been very few denunciations filed at the office of the Fiscalia. This is probably due to the strong social stigmas that are attached to the victims of such acts. 63/

3. Personal liberty

74. During the Representative's mission it was repeatedly mentioned that many displaced persons are being held arbitrarily in prisons either without formal charge or while they await their trial. Also, other displaced have cases pending against them, impeding their return and posing obstacles to their daily lives. These are the so-called requisitoriados, or persons who are being searched for. In many cases, the arbitrary and prolonged detentions of persons suspected of terrorism are due to misunderstandings or error such as the incorrect identification of suspects or confusion in the recording of procedural data; one displaced person, for instance, prominent for his work in organizations of displaced persons, was recently detained, released for lack of evidence, then again detained by mistake. Persons who spoke with the Representative mentioned they had not been able to obtain any answers from the Fiscalia about their cases.

4. Subsistence

75. The internally displaced in Peru are the poorest among the poor. This was made evident to the Representative during brief visits to Huachipa on the outskirts of Lima, to San Felipe in Huamanga, and to San Martín de Pangoa in the province of Satipo. In none of these areas, nor for that matter in many of the returnee sites, such as San José de Secce and Caperucia, is there any electricity, accessible potable water, or sewage system. People said that they had no clothes; even the ronderos had only very tattered and dirty clothes, let alone uniforms. Many said that they needed farming tools and seeds, or materials to rebuild their destroyed homes. In general, long lists of basic needs were recounted at every stop of the Representative's mission. The Government nutritional programme, PRONAA (Programa Nacional de Apoyo Alimentario), is now expanding, but much remains to be done.

76. In some cases, as much as 80 per cent of the displaced indigenous and native communities suffer from malnutrition. Lack of nutritional diversity appears to be one cause. For instance, the Ashaninka displaced communities at San Martín de Pangoa used to hunt, fish and grow coca and coffee, not only for

subsistence purposes but also for trade. However, in San Martín they were able to grow just yucca, in quantities sufficient only for self-sustenance. During the first year of displacement, before the first yucca harvest, the displaced were dying of hunger. 64/ The next two years the yucca cultivation provided some relief; however, the quality of the land gradually deteriorated. One reason why many displaced and migrant families prefer not to return to their home areas is the greater food diversity in the urban centres.

77. Housing is a serious problem in the case of all the displaced communities, which are now living in crowded circumstances. In San Felipe, Huamanga, the displaced live in mud huts, with roofs made out of plastic or tin sheeting. There was no running water until a week before the Representative's visit there, when a water tap was installed. In Huachipa, Lima, the huts are made out of mud bricks or plastic, and housed both people and animals. Both areas are arid, with extreme amounts of dust that aggravate the generally unhealthy living conditions. In addition, many settlements are built on land claimed by others. The Huachipa settlement is in an area full of archaeological sites and the displaced are being threatened with eviction. In San Martín de Pangoa, near Satipo, displaced families lived in wooden huts. Sometimes as many as 12 people occupy one hut. Some members of the family sleep on the earth, leaving the space under the mosquito net for the children. Often, widows who could not build their own huts had to sleep outside, where they faced obvious health and security risks.

78. A lack of basic medication and health care was evident. Respiratory and other infectious diseases, diarrhoea and dysenteries, chronic deficiency diseases, malaria and psychological ailments 65/ plague large parts of the rural and selva areas. The risk is aggravated when displacement occurs. For instance, following their displacement, the Ashaninka community at San Martín de Pangoa lost access to its traditional medicines found in higher parts of the selva, such as the piri piri, and could no longer adequately address the health needs of its members. Similarly, the Andean populations that move to the coastal cities suffer from respiratory diseases because they are unaccustomed to the humidity and pollution of the towns. Ashaninka women who have babies at a very young age face gynaecological problems, which are for the moment unaddressed. Encouragingly, some family planning programmes, which the Government supports, are being implemented by NGOs through women's organizations in Ayacucho. The health sector director of Ayacucho also mentioned that health teams were now starting to visit marginalized urban areas regularly and to provide health kits and some basic health training, through a programme supported by UNICEF and the Médicos sin Fronteras. 66/

79. Children in the rural areas already suffer the highest mortality and malnutrition rates. 67/ Displaced children in these areas are at even greater risk 68/ and their flight often puts them beyond the reach of the few government or NGO programmes that existed, such as vaccination campaigns or feeding programmes. Infant and maternal mortality among the displaced are thought to be much higher and malnutrition of displaced infants and children is widespread. Frequently, the displaced children witnessed the murder of their parents, or the destruction of their homes. As a consequence, many children suffer from depression, nightmares and fear. Psychosocial assistance, however, through which a child can be encouraged to discuss

his/her experiences, is severely limited 69/ and parents, caught in the day-to-day struggle for survival, often have little energy for them. 70/

5. Movement-related needs

80. At present, it appears that freedom of movement in the country is much less restricted than during the war years when flight was obstructed by military and police check-points, return to the "red zones" was impossible and forced relocation to civil bases was reportedly taking place. An issue of even greater concern that was raised during the Representative's mission was that pressure was apparently being exerted on some communities to return to their home areas despite precarious security conditions and unsustainable living conditions. It was mentioned that some communities have even been encouraged to return in order to monitor the reaction of the armed opposition groups. At least one returnee community in the selva was reportedly returned prior to the end of the school year, causing children to lose the year (there was no school in the area of return), and after the harvest had finished so that the returnees had no means of supporting themselves. Some died of hunger as a result. On the other hand, voluntary and spontaneous returns are continuously occurring.

6. Personal documentation

81. Many of the displaced do not have personal documentation such as a birth certificate, the libreta electoral (the booklet recording participation in elections) which is used as an identity document, or the libreta militar (the military registration card). In Huanuco, for example, it is estimated that 25 per cent of the displaced men and 35 per cent of the displaced women over the age of 18 lack at least one, and in some cases all, of the documents mentioned above. 71/ In the past, soldiers and armed dissidents confiscated identification documents as a form of intimidation. Many displaced lost their documents during their flight or destroyed them. Without these papers, official documents cannot be procured, jobs in the formal sector cannot be obtained and bank transactions cannot be performed. Persons lacking personal documentation are immediately suspect, in particular during round-ups in the shantytowns. Some schools refuse to register children without birth certificates. Males who do not have a libreta militar are subject to conscription.

82. For years, NGOs have requested that the Government take measures to address the problem. In 1989 the promulgation of law 25025 established a special procedure for those persons who did not have birth certificates to obtain them, even in areas other than their home areas. However, this special procedure was repealed by virtue of law 26497, which established a national registry of identification and civil status.

7. Property and land issues

83. The issue of land was repeatedly raised during the Representative's mission. According to article 88 of the Constitution, the State protects the right to own land. Some, however, believe that land reforms still have to be carried through. In addition, abandoned lands become State property and can be sold. Lands that are abandoned because of violence also become State

property, unless an exemption is granted by the regional agrarian authority. 72/ To obtain such an exemption, a certification by a military or police authority about the violent incident is required, as well as proof of title; frequently, though, those fleeing cannot obtain the documents. In addition, there is no systematized information about the status of many lands since 1980. It is estimated that only 30 per cent of those who own lands hold titles to them. Some of the displaced have moved into the property of others, and are threatened with eviction; some of those who did not flee have taken over the land of those who did flee. Many displaced have no way of proving their property rights; many cases are pending before the courts, but the problems are not being solved promptly or efficiently.

84. Under the old constitutional regime, lands belonging to communities rather than individual owners were excluded from the registration and ownership regimes. Under the new Constitution, this is no longer the case. As a consequence, communal lands can also be declared abandoned if not farmed for more than two years. According to the native communities the Representative met with, this legal regime does not take into account that the type of forest agriculture that is sustainable in the selva requires a migratory or shifting type of cultivation. In addition, law 26505, promulgated on 18 July 1995, allows these lands to be sold. Some fear that the poorest communities will be tempted to sell for cash, and thus lose their most important resource.

85. Indigenous communities in Peru have preserved to a large extent their traditional living patterns and customs. In the past decades, however, the war and the displacement have disrupted the traditional patterns of land use and have led to greater deterioration of the environment and a significant decrease in agricultural production. 73/

86. The native communities feel that the authorities do not take into account their ancestral land and their property rights and that they take no interest in the preservation of their cultural heritage. They feel in some cases that the construction of roads and other infrastructure projects have the potential of further eroding their communities. Such fears were pervasive in the case of the native communities of the selva who have had traditionally and for ecological reasons communitarian ownership of their lands. 74/ Paradoxically, the communities with which the Representative met expressed a desire for strengthened Government presence. The infrastructure that this requires, however, will bring with it a number of adverse consequences, such as increased in-migration and pressure on land.

87. One of the most serious problems evidenced by the Representative during his visit to the Río Tambo and Río Ene valleys was the incipient conflict between the Ashaninka communities and the colonos, or settlers, who have migrated from the Sierra in search of more fertile lands. As many of the native lands remain unregistered, settlers have been able to move in and take possession of them. This may mean that some of the Ashaninka communities may not be able to return there. Some of the settlers have started growing coca plants 75/ and have become involved with drug-trafficking, in some cases forming alliances with the armed opposition groups. Such is the case in particular in the Alto Huallaga valley, and the Ashaninkas fear that drugs and crime might move into the central selva as well. 76/ New conflictual

situations that would cause displacement cannot be excluded. Government officials also identified health problems that both the colonos were facing in the selva and the disequilibrium they caused in the environment which created health risks for the native communities. 77/ The authorities in Satipo acknowledged the enormity of the problem but mentioned that some first steps were now being taken to organize a consultation process to find solutions.

8. Family and community values

88. One of the most challenging problems among the displaced is the disintegration of families and communities. Large numbers of widows and orphans was a characteristic of every displaced or returnee community the Representative visited; for instance, in one returnee community of 850 persons, Puerto Ocopa, most of the adults are women and 50 per cent of the population are children; 70 children are orphans. A study in the marginal urban areas of Ayacucho shows that of a total of 1,171 families, 200 are headed by widows and another 95 by mothers whose husbands disappeared or were forcibly recruited. 78/ Many children have lost one or both parents, either because they have died or because the family has been scattered. Some orphans are taken care of in institutions sponsored by the Catholic Church, or in State-sponsored orphanages. However, these institutions exist only in major cities. It appears that practically no assistance is available from the State in the rural areas.

89. On the social and family levels the repercussions of displacement for children include antisocial and secretive behaviour and, owing to the culture shock they go through and the discrimination they encounter, they experience shamefulness of their origin or their language. The family environment has also been influenced by the climate of insecurity, fear and frequent absence of the father. One study among displaced persons in Ayacucho concluded that 93.1 per cent of all families experience lack of understanding and communication, intolerance, authoritarianism, violence and aggression. 79/

90. Conflicts have arisen between the returnees and those who never fled or between the recuperados and their families. In group therapy workshops in Lima displaced women lamented the indifference and hostility they were experiencing in the urban setting even in the midst of their own communities. On the other hand, numerous communities have more or less remained together through displacement, and have maintained many of their cultural traditions. This helps to alleviate to some extent the acute problems of loss of family and community and facilitates the process of return to the areas of origin. Because of displacement, some communities now have greater access to the State and feel more integrated. The involvement of the military in the rural areas contributed to the erosion of the community authorities in the area of law and justice. Traditional leadership structures have changed and in some cases have become surprisingly more democratic.

9. Self-reliance

91. Unemployment is a major problem affecting the displaced. They usually have no access to credit, so it is difficult to start up any sort of business to generate income. When they are able to find work, it is in the informal sector, where they are easily exploited. According to one NGO working in

Huachipa, many displaced persons, including children, work in mud brick factories, where salaries reach US$ 22-50 per week, for 12-hour working days. Others work in construction. In fact, those who find such jobs are considered to be fortunate, since they have an income.

92. Many displaced women complained that they now had to do everything on their own, either because their husbands had been killed, "disappeared" or are constantly on patrol ("están siempre rondeando"). Women have managed to support each other through mothers' clubs, communal kitchens (comedores populares) and other grass-roots women's organizations. By buying food in bulk and cooking in large quantities, they have managed not only to improve the food and health of their families and communities, but also to start small businesses that sew and sell blouses, skirts and arpilleras. They frequently organize health videos or cultural events and have managed to gain the respect of their husbands, who in the beginning objected to these activities. Formidable women leaders have emerged from these organizations. In addition to income-generating projects, the women said that they would like funds to be channelled to their organizations in order to help the most needy among them. Also, they hope for legal recognition so that they can apply for loans from the Government and private banks.

93. Rather than attending school, many displaced children have also had to help support their families. In any event many schools have been destroyed or closed, and many children do not possess the personal documentation that is necessary to register. Public education is officially free; however, many schools are underfunded and parents have to pay tuition so that the school can operate. Many displaced children do not speak much Spanish and cannot communicate with their teachers. Many have to restart their schooling upon arrival in the cities because the quality of education in the rural areas is much lower. Loss of memory, linked to traumatic experiences, isolation, loss of cultural reference points and the psychological fragility of many families, however, account for a very high number of drop-outs. Despite the serious economic problems facing displaced families, many try to join the public education system, which in Peru is an important source of Government-sponsored nutrition programmes and health care.

C. Prospects of return and alternative settlement

94. A significant return trend is evident in Peru that has been fully encouraged by the Government and the donor community. However, lack of security and sustainable living conditions often inhibit return, impair return projects and cause new displacements. Lack of education in the return areas, in particular, was identified as a serious disincentive to return. Such risks are compounded by the traditionally high mobility of the population for farming or other purposes, difficulties in access and the institutional weakness of the State, which is not in a position to prevent the militarization of social activities.

95. Aware of these risks, the Government has established a programme to support returnees, PAR (Programa de Apoyo para el Repoblamiento), and has undertaken a number of infrastructure projects, particularly concerning roads, schools and health centres, to help improve the living conditions in some rural areas. The President, in a commendable effort to understand the

problems in rural areas, frequently conducts visits to remote settlements and attempts to address some of the most pressing needs. At his invitation, the Representative accompanied him on some of these visits and was able to witness the President's manner of operation in this area.

96. The Government has solicited the assistance of some donor Governments and international agencies to strengthen its efforts. Church organizations, domestic NGOs, the International Organization for Migration, the United Nations Development Programme and other international agencies have also become involved with return projects in various ways. In particular, the Government has solicited the support of IOM in designing a project to facilitate the return of 25,000 persons over the next three years. By the end of December 1995, IOM expects to have completed a pilot project of return of approximately 250 persons to Huamanquiquia, in the department of Ayacucho; shortly after the Representative's departure from Peru the first families returned there. To prevent future displacement, IOM interviewed potential returnees prior to their move and placed monitoring staff in the area of return for a minimum of three weeks. It also installed a medical post and an electrical cable, and constructed a road. (Previously it took three hours on foot uphill to get to the nearest road.)

97. Generally speaking, the IOM studies 80/ conducted through 1994 and 1995 show that any return project should have the following components: 81/

(a) Identification of potential returnees;

(b) Selection of the communities whose return would be promoted, taking into account the level of security in the zone and the minimum conditions of reconstruction of the infrastructure and the social fabric;

(c) Implementation of a health programme before the return;

(d) The initiation of psycho-emotional assistance before the return;

(e) Human rights promotion;

(f) Organized transfer of communities;

(g) Reintegration in the areas of origin preceded by an evaluation (on the part of the communal authorities and the executive entities, public and private) of the minimum conditions of self-sustenance and self-protection, as well as of the possibility of detecting imminent conflicts;

(h) Continuation of education;

(i) Medical attention;

(j) Implementation of community works of reconstruction;

(k) Technical assistance for agricultural production;

(l) Reinforcement of social relations through conflict resolution organs;

(m) Integration of mid-term development programmes to alleviate poverty.

98. In addition, the IOM studies recommend that laws be amended to provide for those who lack personal documentation, for procedures for the adjudication of land claims, for the demilitarization of the rondas and for the creation of democratic institutions for the resolution of conflicts. Similar suggestions are contained in a UNHCR-sponsored study, conducted in 1993 and 1994 by the Andean Commission of Jurists. 82/

99. One serious problem is the perception by some of those who remained in their areas that those who fled are deserters. There are those who feel that they defended their lands through the worst of the war, and that they now have claims over the property of those who took "the easy way out". 83/ The displaced, on the other hand, feel that they fled for legitimate reasons and that their flight should not affect their property rights. Questions also remain with regard to the future of the lands of those not returning at this stage to their communities. It is unclear whether they would retain their property, at least for some time, or whether the lands in question would be redistributed.

100. Government and agency projects have had a relatively small impact in relation to the enormous needs. For instance, there are 579 PAR community centres in four departments, covering approximately 250,000 persons. This figure covers not only displaced persons but entire communities. This means that the vast majority of returnees are not reached by government programmes. This is particularly true for communities that are difficult to access, such as many remote highland areas and the native communities in the selva. It appears that PAR officials had never been seen in Satipo before the arrival of the Representative in August 1995. Returnee communities in particular in the Río Ene valley disapproved of the way they had been "dumped" in their home areas and abandoned, without receiving the assistance they had been promised.

101. Approximately half of the displaced prefer to stay in their urban settlements, 84/ despite the harsh, degrading conditions there, because of the services that are available such as schools and nutrition facilities. In addition, many of the younger displaced feel little affinity with life in the rural areas. Lack of schooling in areas of return is a major impediment in the decision of many families to return home.

102. Another problem connected with return, as expressed by some of the displaced, was their reluctance to again become parties to a conflict that is not theirs: forced to take sides during the years of the war, many of the displaced refuse to join the self-defence committees and do not want to risk being forcibly conscripted by the armed opposition groups. Also, many fear arbitrary arrests or reprisals, since for many years those who left were suspected of being Shining Path supporters or members. For these reasons, some displaced criticized the Government's emphasis on return, which has resulted in implicit and explicit attempts by the authorities to coerce some communities to return. Others criticized the lack of consultation with

organizations of the displaced and the emphasis on large infrastructure projects rather than family and community rehabilitation programmes.

103. For the moment, it appears that the Government has not given serious thought to the permanent settlement of displaced persons in the areas in which they have sought refuge. The only government agency specifically assisting some displaced persons, PAR, is supporting only returnee communities. The Government mentioned that those who opt for settlement in the areas in which they now live or any other areas of the country (hereafter alternative settlement) would benefit from general social welfare programmes. The displaced, however, believe that displacement has had an impact on them that requires qualitatively different attention and support, which is not available through existing government projects, to which they in any case have limited access. In addition, safety net programmes in Peru, such as FONCODES, do not appear to be particularly effective. 85/

D. Measures taken by the Government

1. PAR

104. Until the early 1990s no action had been taken by the Government of Peru to address the problems of internally displaced persons. The National Technical Commission for the Problem of Displaced Populations was formed by the Council of Ministers in 1991. 86/ UNDP financed the contracting of consultants and field visits for the first report of the Commission which was presented to the President of the Council of Ministers in April 1992; in September an operational plan was presented. As a follow-up to this process PAR was created in October 1993 to take action for the return of displaced persons to their places of origin. PAR institutionally belongs to the National Institute for Development (INADE) and is geared towards investing in infrastructure, and to a limited extent in emergency relief. Its chief defines it as a social development project intended to support those who were displaced by terrorist violence and who want to return to their areas of origin. Its projects are primarily in four departments: Huancayo, Ayacucho, Apurímac and Huancavelica. At a later stage, it plans to start projects also in Puno, Huanuco, Ucayali, Cajamarca and Pasco. In April 1994 the PAR Interministerial Committee was established to coordinate the measures taken by the Ministries of Health, Education, Transport, Agriculture, Defence and Industry and the Office of the President and to mobilize resources on a multisectoral basis. The Representative met with representatives of all of the above agencies.

105. Committees with a structure similar to that of the Interministerial Committee of PAR exist in the departments targeted for PAR programmes. Their mandate is to respond to all emergency needs in the areas of food, basic health and education. PAR officials mentioned that while PAR had started out as a project to assist the returnees, today the strategies were community-based. A constant theme of their presentations was that there were insufficient funds to implement the necessary projects.

106. Some NGOs mentioned that despite the funds given to PAR and INADE by the donor agencies, delivery of services was not substantial and did not reach many communities. Organizations of displaced persons also lamented the fact

that PAR had not entered into consultations with them, even though they are in a much better position to outline the basic needs of displaced and returnee communities as well as conditions in their area of origin.

2. Other programmes of emergency support 87/

107. A number of other government agencies exist that are mandated to cover emergency and development needs. These include: FONCODES, created in 1991, a financial agency charged with administering the State social investment in favour of the poorest sectors of the country; PRONAA, created in February 1992, which has provided some food assistance to the poorest sectors of the population; and the Instituto Nacional de Bienestar Familiar (INABIF), created in 1981 to evaluate and direct government policy on family welfare matters. 88/

3. Legal steps

108. Prior to the Representative's mission, no concrete measures had been taken to address some of the most critical needs of the displaced. While international agencies and NGOs had made a variety of suggestions and submitted draft laws, no initiatives had been taken. The President of the Commission on Human Rights and Pacification of the Congress mentioned that a draft law was currently under consideration in the House.

4. Approach to NGOs

109. It appears that the Government has no institutional policy of consultations with civil society. In particular, NGOs dealing with human rights issues mentioned that the Government's attitude towards them was not only one of exclusion, but also one of hostility. In general there was an impression that the Government was reluctant to include in its projects international NGOs, the Church, local NGOs, grass-roots organizations and even organizations of displaced persons and of native and peasant communities. In his meetings with the leaders of the Government, including the President, the Representative recommended strongly that the Government consult and cooperate with the NGO and human rights community in addressing the needs of the poor marginalized communities and in particular the internally displaced.

110. It was very positive, therefore, that the Government was represented, in the person of the President of the congressional Commission on Human Rights and Pacification and the Director of PAR, in the seminar-workshop organized by the National Working Group on Displacement, a federation of NGOs working with internally displaced persons, which the Representative addressed at its closing session. It was even more so, given that the Government had twice retracted its co-sponsorship of a National Forum on Displacement that was to have taken place earlier in the year.

E. The role of the non-governmental community

1. Grass-roots organizations and organizations of the displaced

111. In Peru the displaced are organized to a degree not witnessed by the Representative in any other country. There are organizations at all levels,

working for the interests of the displaced, those who have returned, and those who have opted for alternative settlement. These organizations were created during moments of extreme conflict, when both the civilian Government and the NGOs had left. Initially, these organizations were very weak and their leaders were always targets of violence. Today, through local working groups and their federations, the displaced are attempting to make their own voices heard and contribute to solving their problems. Among both the indigenous communities and the native communities there are formidable leaders that impressed the Representative with their commitment to their communities and the soundness of their ideas about their future. Women's organizations have managed not only to organize the provision of basic food and medical assistance, but also to provide a forum for discussion and social support. In Ayacucho it is estimated that 80,000 women are participating in clubes de madres.

2. Relief and human rights organizations

112. Church organizations were among the first to provide the displaced with emergency assistance and to encourage them to organize. Today they support both return and settlement projects. They have also provided human rights training and legal assistance. In some areas of the country, in particular the selva, the Church has a stronger presence than the army or the civilian Government; during the years of the war, Church missions were the only outside presence capable of providing any degree of protection to the victimized native communities; missionaries paid with their lives for their public opposition to the Shining Path.

113. A range of other organizations exist that provide services including emergency aid, medical and psychosocial assistance, human rights education, 89/ legal defence and training of community leaders. Many of the NGOs have participated in different coordination initiatives, such as the National Working Group on Displacement.

114. Nevertheless, the scope of these organizations' activities, even with the support of international NGOs and donor agencies, remains rather limited. In Ayacucho, for instance, it is estimated that perhaps 20 per cent of the population is receiving some sort of assistance, but not through an integrated assistance programme. In the selva very few NGOs are present.

115. Despite the many NGOs in Peru and the high degree of organization in civil society, relationships between the Government and the NGOs remain strained and tenuous. The Government is sceptical about what it terms the "jungle" of NGOs and is openly hostile to human rights NGOs which it has publicly declared are suspicious. The attitude of the Government to the human rights organizations was a subject of dialogue between the Representative and the President together with his ministers and senior officials. The Representative was of the view that a dialogue between the Government and these organizations could reveal not only areas of differences to be resolved, but also areas of agreement and cooperation, especially as reflected in the President's efforts to reach out to the rural poor and the need to assist the internally displaced.

116. An additional cause of concern was the occasional lack of coordination among the local NGOs (including the Church organizations) and between the local NGOs and the grass-roots organizations of the displaced. Some grass-roots organizations complained that NGOs were patronizing or exploiting them, for their own fund-raising purposes or other political objectives.

3. International donors and other organizations

117. Until 1991, when the United States Committee for Refugees published its report on the internally displaced in Peru, 90/ virtually no international attention had been paid to the problem of internal displacement. Afterwards, various international agencies and NGOs became more involved. Since 1991, UNHCR has undertaken studies regarding the internally displaced, in the context of prevention. It decided, however, not to become directly involved because "the criteria for UNHCR involvement were not met in that, firstly, the situation did not present a link with mandated activities and, secondly, there was no clear indication of humanitarian efforts by other United Nations agencies to which UNHCR's activities could be supplementary". 91/ At the same time, it indicated readiness to become involved if inter-agency programmes were developed dealing with legal documentation; counselling services to prepare displaced persons for return; and public awareness initiatives aimed at mobilizing international funding support.

118. In 1992 UNDP and the United Nations Development Fund for Women contributed a study on displacement, gender and development to the Government's Technical Commission. 92/ Since then, UNDP has provided support to INADE and PAR, while other agencies, such as the World Food Programme, have provided food assistance both to government agencies and NGOs. UNDP has also undertaken certain programmes for the poor in an amount of US$ 128 million, some of which benefit returnees and internally displaced persons. UNICEF also implements a variety of food, health and education programmes for orphaned and displaced children in Ayacucho and the central Amazon region.

119. IOM's role in Peru has been a significant one. In 1980 the Government and IOM concluded an agreement of cooperation that identified internal migration as an important area of cooperation. In 1994, Peru made a request for technical cooperation to IOM, on the basis of which IOM prepared two reports published in 1994 and 1995. 93/ As mentioned above, IOM has embarked on the implementation of the first phase of a project to assist displaced persons to return to their home areas.

120. The International Committee of the Red Cross (ICRC) has had a strong presence in Peru throughout the war years. It has assisted scores of displaced persons, widows and orphans in Ayacucho, Apurímac, Huancavelica, San Martín and Huánuco. The ICRC has provided emergency assistance to displaced persons, when no other resources were available, for periods of two or three months following displacements.

121. Other donors include OXFAM, 94/ which provides funding for local NGOs that promote self-organization among the displaced. The International Council of Voluntary Agencies (ICVA) sponsored a Consultation on Displacement and Refuge in the Andean Region in 1993 which adopted an Andean Declaration on

Displacement and Refuge. A Project Counselling Services (PCS) office, which represents a consortium of Nordic refugee councils (NGOs), was subsequently stationed in Lima.

122. Cooperation on a bilateral basis between the Government of Peru and other Governments also accounts for a number of projects that directly or indirectly benefit the internally displaced. 95/ The United States Agency for International Development (USAID) has been the largest donor of food aid to Peru and has provided financial support for a number of human rights projects and return projects of the Government.

123. International organizations have a better dialogue with the central Government and with the local military authorities than do local NGOs. However, as many of their representatives pointed out during the mission of the Representative, coordination among them needs to be improved. A comprehensive approach regarding the Government's policies on internally displaced persons, in particular its emphasis on return, is lacking.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Structural reforms and pacification

124. The primary cause for the displacement of as many as 1 million Peruvians over the past 15 years has been the conflict between armed opposition groups and the armed forces of the Government. From the brink of non-governance a few years ago, the country today has returned to a situation of relative normalcy, and hope that life can start up again has been largely restored. As long as the root causes of the violence are not dealt with, however, it is difficult to see how genuine stability will return to the country. Vast areas of the country are still relatively isolated, and economic and social divisions among the different ethnic groups persist.

125. It is important to recall that the armed opposition gained strength in the most isolated departments that were in states of deepening poverty. Although the Shining Path's elitist ideological policies and the terrorist nature of many of its operations quickly alienated its popular support, and although today violence has decreased, it must not be forgotten that the wounds the conflict opened inside many communities will take much longer to heal.

126. To ensure that the pacification process is irreversible, the Government will have to address the structural injustices in the rural areas. It will have to include its citizens in such projects, ensure that their human rights are protected and respected, and commit itself to addressing their real needs.

B. Participation of civil society

127. For the moment, the Government has adopted a rigid position, claiming that once terrorism has been defeated, development can start and those displaced because of the terrorism can return home. However, as argued forcefully by one displaced leader, the displaced see their displacement and the problems related to it as human rights problems that are caused not only by the armed dissidents but by all the agents of violence and linked to the

underlying causes of the conflict. For this reason they are critical of the Government whose main concern appears to be how to reverse massive migration to the urban centres. The displaced want their organizations to become full interlocutors in decisions affecting them. Where they have managed after years of hard work to adapt to the urban situation, they want to have the option to remain there. A dialogue with displaced persons and the Government is needed to resolve this issue. Inviting the citizens of Peru to participate in the pacification process and including them in projects for development should become a priority for the Government.

128. Cooperation between the Government and the NGOs must be significantly enhanced. NGOs, in collaboration with displaced persons' organizations, are able to extend the reach of assistance into more remote areas. They are also uniquely able to offer community development services aimed at rebuilding the social fabric. The seminar in which the Representative participated is an encouraging first step towards increased cooperation and dialogue and the Representative sincerely hopes that the Government, the NGO community and the displaced will use it as a springboard in their future work.

C. Respect for human rights

129. Legitimacy is the cornerstone of law and order in any country. While in the short run circumvention of the rule of law may appear to be effective in solving structural problems, in the long term it creates insecurity of the person and entrenches unfairness and impunity. Even if human rights violations have decreased, there exists a feeling in emergency zones that anything could happen, especially in the light of the almost total impunity of the military. This is so because, as some senior government officials admitted, the parties to the conflict seem likely to maintain the mentality of violence for years to come.

130. What is being observed currently in Peru is mistrust on the part of the leadership of the rule of law and the judiciary and the consequent malfunction of both the legislative and the judiciary powers. Ongoing human rights violations must be condemned and laws that violate international standards (such as the amnesty laws) need to be reconsidered and addressed through more fundamental legal and institutional reforms than is the case at present before they become the source of renewed discontent. The Representative draws attention in particular to the recommendations contained in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Peru (see E/CN.4/1994/7/Add.2) which are still valid today and which address the problem of impunity, the civilian justice system and the self-defence committees. Emphasis should be given to solving any remaining cases of "disappearances" and an efficient mechanism for compensation of those who have been victims of abuses needs to be established.

131. Seeking the cooperation of local human rights organizations that are acknowledged to enjoy international respect for their work and expertise (instead of incriminating them) as well as of international specialized institutions (such as of the Centre for Human Rights) should be an element in initiating such reforms. 96/

132. As for abuses committed by non-State actors, it must be recalled here that, from the point of view of international law, certain instances of individual responsibility are recognized which could apply to non-State actors; these abuses have been repeatedly denounced by local and international human rights organizations. Enforcement at the international level, however, will remain relatively rare, until States collectively take the necessary steps to ensure international prosecution for such crimes. States have a fundamental responsibility to take all measures possible to protect people who are threatened or victimized by non-State violence, including by measures to prevent the outbreak of such violence.

133. In general, human rights promotion and protection at the local level are very important. Human rights training in schools, universities and the armed forces should be enhanced. The creation of local human rights committees where both State actors and the civil society would participate should be considered. This would facilitate both the communication and resolution of cases of human rights violations.

D. Impact of displacement on indigenous peoples

134. The vast majority of the displaced are from the indigenous and native communities. Violence and displacement have fundamentally altered their way of life. Even the manner in which they construct their homes and the form in which their communities are physically organized have changed. 97/ Psychologists and sociologists working with them have noted that they suffer more than any other social group in the Andean region when they are uprooted, since they lose the links with their lands and traditions. Grief, depression, feelings of guilt, nostalgia and loss of their identity are compounded by educational and linguistic barriers, 98/ serious health problems, crime, drugs and insecurity. As a consequence, the displaced have serious difficulties adapting to life in the areas of refuge, particularly in the cities.

135. Women. Displaced women have been affected disproportionately by violence and displacement for many reasons: they belong to marginalized communities, their family units have experienced violence, their domestic situation, one of subordination, subjects them to aggression, their gender increases the risk of gender-based violence, and their participation in organizations triggers persecution. Displacement has given some women new opportunities to organize and new roles; for most, however, it has entrenched the structures of female subordination. Women who have to sustain their families are often overworked and at high risk of being exploited and abused. The loss of husbands or sons, in addition to the severe effects this has on the emotional well-being and the economic and social position of the women, results in a loss of protection and rights that were previously "accessible" through the husband. In the areas of return, where the role of protection is played by the ronderos, who are all men, gender inequalities can be acute; this is aggravated by the absence or inaccessibility of the official justice system.

136. Children. The problems facing displaced children are also grave. The most serious are inadequate opportunities for education, health problems, insufficient family support, difficulties in integrating into urban society and, for returnees, difficulties in reintegrating into rural society.

Children who have been conscripted by either side to the conflict and have been traumatized by the violence they have participated in need specialized attention, especially in the area of psychological rehabilitation and support.

137. NGOs working with the displaced say that it is necessary for government projects to focus on education, the rehabilitation of the families, training and management skills, bilingual education and psychosocial support. They find small-scale projects to have more of a beneficial effect than large infrastructure ones, such as big hospitals or schools. In view of the demonstrated capacity of grass-roots women's organizations, such as the clubes de madres or the comedores populares, to address many of these needs, serious consideration should be given to channelling more funds to them. Also, NGOs that have been working for years with the displaced could be relied upon for valuable information and for the implementation of government or agency projects.

E. Protecting the internally displaced

138. Certain protection problems, while common to many Peruvians, are of particular concern in the case of internally displaced persons. These include, in particular, issues related to personal documentation, personal liberty and land.

139. Lack of personal documentation increases the risk of arbitrary detention, false charges and forced recruitment by the armed forces. Efforts, including the necessary legal reforms, must be undertaken to facilitate the registration of displaced persons in their areas of residence and to provide them with the necessary documents. Emphasis should be given to the swift processing and resolution of all cases of requisitoriados. The practice of forced recruitment should be abolished and the activities of the self-defence committees should be closely scrutinized.

140. Efforts to register all lands, to provide property titles to those who do not have any and to enhance the system of adjudication of land disputes should be accelerated. In particular regarding the native communities of the selva, equitable policies and sustainable development principles need to be taken into account when decisions about their ancestral lands are being made, and the legal status of these lands should be strengthened and clarified. These communities may have, under emerging international law, restitution, restoration and compensation rights for the occupation or use of their lands without their free and informed consent, irrespective of whether they hold formal property titles.

141. The Representative recalls here that legislative initiatives along the lines mentioned have been pending before Congress for over a year. A higher degree of attention should be paid to them and action should be taken as a matter of priority. The Representative also recalls the proposals contained in the report of the Andean Commission of Jurists and UNHCR 99/ that suggest what type of action should be taken during the prevention, emergency and post-emergency periods in the areas of justice, nutrition, health, psychological attention, education, employment and income generation.

F. Devising preventive strategies

142. Since many areas of the country are more secure and communities are starting to resume their lives, it is crucial that they devise their own preventive strategies to defend themselves from new outbreaks of violence. Arming the rondas should not be the only way; strengthening the community structures and encouraging solidarity and conflict-resolution mechanisms might be more effective and constructive. For instance, it appears that the Shining Path was relatively unsuccessful in infiltrating the Aymara-speaking communities because of their cultural specificities. Displacement in the department of Puno started later than in the Sierra and the situation there has been documented in less detail. It might be useful to explore the reasons for this and suggest possible preventive strategies to be employed by other communities.

G. Increasing government support

143. Scant support has been provided by the State to the displaced and to its poorest citizens in general. The Government was slow and ambivalent in implementing safety net programmes when it introduced its austerity measures in the early 1990s; as a result the welfare of the poor communities has deteriorated steadily over the past 10 years. While certain efforts are being undertaken, including by the President personally, to reach out to the most marginalized communities, these efforts are of an ad hoc and almost charitable nature. 100/ In addition, deep-rooted centralization means that projects are not targeted enough to the particularities of each community and that funds are channelled to them too slowly.

144. Firmer political will is needed to fund social projects, including those assisting the displaced and returnees. PAR appears to be an underfunded and relatively ineffective agency. However, since it has gained expertise and some recognition over the past few years, it should be strengthened and supported, and if necessary restructured, rather than abolished. This is the case especially if it is to attend to the needs of the displaced who opt for settlement in alternative areas, a measure which the Representative endorses. Care nevertheless has to be taken that such assistance is development oriented and capitalizes on the resources of the communities. PAR will have to develop comprehensive strategies that address all human rights concerns. 101/ The role of the local administration should be enhanced and cooperation with NGOs and grass-roots organizations at all levels needs to be strengthened, especially in view of the demonstrated capacity of Peruvian communities to organize themselves.

145. Despite the fact that many communities still remain relatively isolated, their requests for material support from the Government are quite well developed and rather consistent. The Representative was repeatedly asked during his mission to bring a number of such requests for assistance to the attention of the Government. The Representative did so and also brought them to the attention of the United Nations Resident Representative who plans to look into and follow up on these requests. Most related to immediate and mid-term needs for food, construction materials, income-generating tools such as sewing machines, clothes, education materials, kerosene kitchens and other utensils and the allocation of space to shelter newly displaced persons.

H. Return and alternative settlement

146. While the authorities stressed that everyone who returned did so voluntarily, and indeed there were few allegations that displaced persons had returned against their will, it must be observed that coercion can take various forms, some more subtle than others. For instance, campaigns that create the impression that there is no other viable option but to return home, or promising assistance only to returnees, may amount to coercion. As the Representative has emphasized during his previous missions, return to unsustainable conditions not only endangers the lives of the returnees, it also undermines the return process and can jeopardize the general stability of the country.

147. Equal assistance and protection should be provided to those who return to their home areas as well as those who opt for settlement in alternative areas.

148. In addition, both return and permanent settlement require the gradual integration of organizations of the displaced and the returnees into the local social organizations in the areas the displaced have selected for permanent settlement, and that the local organizations be informed about the problems of the displaced.

149. While these processes are going on, it should not be forgotten that emergency assistance will still be required to address the emergency needs of those who are still being displaced by the violence.

150. In this regard, the frequent coverage of the situation of the displaced and the rural communities in the media, including their needs and their protection concerns, is very positive. Efforts to foster national reconciliation and a greater understanding of the problems of the displaced merit particular praise and should be continued.

151. It is essential that agencies and donors affirm the principle of voluntary return and the need to assist in equal terms the internally displaced persons who wish to remain where they are now settled. In particular, all agencies involved should make sure that their activities do not endorse wholesale the Government's return plans if these plans do not respect the choice of the internally displaced persons for alternative areas of settlement. Adequate safeguards against forcible return should be built into any process preceding return projects.

I. A call for international cooperation

152. The United Nations should take the lead in encouraging international assistance to the internally displaced in Peru, including both those who are returning to their areas of origin and those who choose to settle in the areas in which they have been living as displaced persons. International aid should address short-term, emergency needs, but focus primarily on longer-term developmental needs and on education, which many displaced families see as their main hope for the future.

153. If the internally displaced were returning home from exile abroad, UNHCR would mobilize international assistance to facilitate the return and reintegration process. That not being the case in Peru, the Department of Humanitarian Affairs, in conjunction with the UNDP Resident Representative, should initiate and coordinate such a programme of international assistance. Initially, a detailed assessment of the needs of the internally displaced should be compiled, building on the information already contained in this report as well as other existing assessments. The United Nations, in consultation with the Government, NGOs and displaced persons' organizations, could then propose specific projects - both Quick Impact Projects and longer-term development projects - aimed at addressing those needs. Projects already developed and/or being implemented by the Government, IOM and Peruvian NGOs could serve as models. The Department could then launch an international appeal for funds to implement the proposed projects. The United Nations should encourage the implementation of such projects through the coordinated efforts of both the Government and the private sector. To facilitate this, a forum should be established in which the Government, NGOs, representatives of displaced persons' organizations, international donors and other civil institutions meet regularly to discuss and coordinate their work.

J. Concluding comment

154. As noted at the outset, the mission to Peru was in many ways a model of the advocacy and awareness-raising role which the Representative of the Secretary-General has developed since his appointment in 1992. In terms of the dialogue with the Government, the initial meeting with the President and accompanying him on his visits around the country set a positive tone which facilitated discussions with ministers, other government officials, representatives of the donor community and NGOs. It also generated media attention that contributed significantly to the awareness-raising that is the essence of the catalytic role of the mandate.

155. From the perspective of the substantive findings of the mission, the situation reflected a number of contradictions or paradoxes. On the one hand, the Government appeared to be concerned with the plight of the marginalized communities, among whom the internally displaced are a particularly vulnerable group. On the other hand, there appeared to be a virtual neglect of large communities, including displaced persons and returnees, who remain without State protection and assistance. In part, this is due to the Government's lack of capacity to meet the monumental needs of the people. But it is also a reflection of the inadequacy of existing institutional arrangements and operational strategies for response. Representatives of the United Nations and other donor agencies indicated that the willingness of the international community to provide assistance will, to a significant degree, depend on the extent to which the Government demonstrates a clear political will to respond to the needs of the affected population and sets in place mechanisms for doing so.

156. These problem areas were raised and discussed in a candid but cordial and constructive dialogue with the authorities. While there were differences of opinion on certain issues, the dialogue with the authorities was characterized by a large measure of agreement on the urgency of meeting the needs of the internally displaced. The critical question is the extent to which the

momentum generated by the mission can be sustained and the recommendations made acted upon. The Representative plans to work in close cooperation with the Resident Representative in Peru, who is also the Resident Coordinator, and the Inter-Agency Standing Committee's Task Force on Internally Displaced Persons to pursue follow-up activities. Such activities would indeed add to the value of the mission to Peru as a model for the mandate.

Notes

1/ HRI/CORE/1/Add.43, paras. 7 et seq.

2/ CERD/C/SR.1083, paras. 17 et seq.

3/ United States Committee for Refugees, The Decade of Chaqwa: Peru's Internal Refugees, p. 7 (1991) (hereafter USCR report May 1991).

4/ HRI/CORE/1/Add.43, para. 29.

5/ Ibid., para. 31.

6/ Palmer (ed.), Shining Path of Peru (1992).

7/ Le Monde, 1/2 January 1995.

8/ HRI/CORE/1/Add.43, para. 45.

9/ See, e.g., "Senderistas detenidas planeaban recomponer comité regional norte", El Comercio, 26 August 1995, and "Mil 800 arrepentidos habrian vuelto a Sendero", La Republica, 17 August 1995.

10/ Through Supreme Decree 002-93-DE/CCFFAA of 16 January 1993.

11/ Members of the Committee on the Elimination of Racial Discrimination (CERD) expressed serious misgivings at the observations made by the Government with regard to these groups and requested more information. See CERD/C/225/Add.3.

12/ See HRI/CORE/1/Add.43.

13/ Ibid.

14/ See also Comisión Inter-Americana de Derechos Humanos (CIDH), Informe Sobre la Situacion de los Derechos Humanos en Peru (1993).

15/ The Constitution recognizes two states of exception: the state of emergency, which is decreed in the event of a disturbance of the peace or internal order, and the state of siege, imposed in the event of invasion, external war or civil war or imminent danger that they might arise. See

also the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Peru (E/CN.4/1994/7/Add.2); Amnesty International, Peru: human rights after the suspension of constitutional government (May 1993).

16/ In these areas the rights connected with personal freedom and security, inviolability of the home and freedom of movement may be restricted or suspended, while the Political-Military Command has assumed control of law and order. According to a government report (HRI/CORE/1/Add.43, para. 166), this comprises nowadays not only pacification strategies, including the supervision and facilitation of return of displaced persons, but also civic activities, such as the construction of roads and other development projects.

17/ Constitutionally guaranteed procedure, allowing a person to bring a claim against any authority for an action or omission that harms or threatens his or her liberty and related rights prior to such action or omission.

18/ Constitutionally guaranteed procedure, allowing a person to bring a claim against any authority for an action or omission that harms or threatens his or her constitutional rights.

19/ Judges sin rostro. The court sits behind a glass window that allows it to see the defendant, but not vice versa, so as to protect its anonymity and physical security. Critics point out that this measure violates international standards of fair trial.

20/ DL 26447 of 19 April 1995, DL 26537 of 12 October 1995.

21/ NGOs note that even civilians who had nothing whatsoever to do with the armed opposition groups nevertheless "repented" in order to avoid trouble in the future.

22/ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1995/61). In cases of counterinsurgency operations, violations of the right to life can be massive. Such was the case in early 1993 where military operations in the Alto Huallaga valley were reported to have caused the death of 60 civilians.

23/ Report of the Working Group on Arbitrary Detention (E/CN.4/1995/31 and Add.1-4).

24/ Report of the Special Rapporteur on torture (E/CN.4/1995/34, para. 574), Committee against Torture (CAT/C/SR.194/Add.1 of 22 November 1994).

25/ See in particular the various instruments discussed in HRI/CORE/1/Add.43.

26/ Summary records of the Committee on the Rights of the Child (CRC), October 1993.

27/ See television appearance of the President and the General Commander of the Army on 8 December 1994. See also E/CN.4/1995/61, paras. 250-262.

28/ See also appeal of 13 July 1995 launched by the World Organization against Torture, Case PER 130795.

29/ One extreme case is Lurigancho prison. According to a newspaper, out of 4,705 prisoners, only 329 have been actually sentenced; the rest are awaiting trial. "Las carceles peruanas siguen habitadas por presos sin condena", El Comercio, 27 August 1995.

30/ Such is the case of one judge who challenged the constitutionality and legality of the amnesty laws. Charges were filed against her by the Office of the Attorney-General.

31/ Under the 1993 Constitution, the economic and social rights are in a chapter separate from the "rights fundamental to the person".

32/ Information provided by UNICEF.

33/ Statistics provided by the Comisión Episcopal de Acción Social, August 1995.

34/ COTADENA, Situación del Menor y la Familia en la Ciudad de Ayacucho (April 1993).

35/ See also HRI/CORE/1/Add.43, para. 66.

36/ In Apurimac 69 per cent of all women are illiterate, whereas in Lima 6.9 per cent are illiterate. See Embajada Real de los Paises Bajos, Lima, La Cooperación Técnica Holandesa en el Perú (1994-1995).

37/ See also HRI/CORE/1/Add.43, para. 45.

38/ See APRODEH/CEDAL, Los Derechos Económicos y Sociales en el Perú (1994).

39/ Amnesty International, op. cit., p. 37 (citing an internal document of the Shining Path entitled "Sobre las dos colinas: la querra contrasubversiva y sus aliados").

40/ USCR report May 1991.

41/ Interviews during the mission. See also E/CN.4/1995/61, paras. 250-262.

42/ See Coordinadora Nacional de Derechos Humanos, Los Ashaninkas: Un Pueblo que Busca Renacer (June 1995).

43/ Such was the case of María Elena Moyano, President of the Women's Popular Federation of Villa El Salvador, and an outspoken critic of the Shining Path, in February 1992. See E/CN.4/1994/7/Add.2.

44/ Urgent appeal of four special rapporteurs of the Commission on Human Rights issued 1 August 1995; the urgent appeal was published in several newspapers in Peru, e.g. see "ONU expresa su preocupación por la amnistia para asesinos", in La Republica, 18 August 1995. See also the statement of the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which expressed "their deepest reservations as to the effects of both the amnesty law and its interpretative law on impunity" (E/CN.4/1996/2-E/CN.4/Sub.2/1995/51, para. 338).

45/ Ibid.

46/ Four thousand three hundred considered to be members of the Shining Path and 700 considered to be members of the MRTA.

47/ See also HRI/CORE/1/Add.43, para. 38.

48/ Comité de Coordinacion Interministerial del Par, Programa de Apoyo al Desarrollo Local, a la Consolidación de la Paz y al Repoblamiento, p. 5, quoting CEPRODEP (Centro de Promoción y Desarrollo Poblacional) estimates (March 1995).

49/ Ibid. Official and other sources have relied heavily on NGO sources to arrive at these estimates, in particular a study by CEPRODEP. See Propuesta, No.1 (April 1993).

50/ See United States Committee for Refugees, To Build Anew: An Update on Peru's Internally Displaced People (October 1993). One study undertaken in Lima showed that out of 180 displaced persons, 118 were women; 13.3 per cent of the displaced were widows or widowers.

51/ Ibid. See also HRI/CORE/1/Add.43, para. 35.

52/ In fact, even "traditional" migrants would appear to identify themselves as displaced because of the violence for this reason.

53/ See Comision Andina de Juristas y Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), Aproximaciones a la Situación de los Desplazados en el Perú (March 1993) (hereafter UNHCR report).

54/ For an overview see Grupo de Trabajo de la Region Central Sobre Desplazamiento, III Encuentro Interistitucional sobre Desplazamiento en la Region Central (1995), II Encuentro de Intercambio de Experiencias: Alternativas para Migrantes de Zonas de Emergencia (1992).

55/ See HRI/CORE/1/Add.43, para. 38.

56/ CERD members noted that the concentration of displaced persons in the shanty towns amounted to de facto segregation.

57/ See generally, Asociación Suyasún, Condiciones de Vida de la Población Desplazada por Motivos de Violencia Política Atendida en los Programas de Suyasún.

58/ For the problems this situation creates, including disruption of the family life, see Isabel Manrique, Sistematizacion de una Experiencia en Terapia Grupal con Mujeres Desplazadas (unpublished paper, on file with the Secretariat).

59/ See Pompeyo Coronado R. and Marisol Rogríguez V., CAAAP, La Cultura Asháninka, Identidad en Conflicto (May 1993).

60/ See Americas Watch, Untold Terror, Violence Against Women in Peru's Armed Conflict (1992).

61/ See also UNHCR report, p. 161.

62/ See, however, Americas Watch, op. cit. p. 4, saying that rape of women by the Sendero is much less common, and that women are targeted because they are activists rather than women.

63/ In the case of the Ashaninka traditions, for instance, sexual relations out of wedlock are prohibited, which is the reason why women are married as early as 13 or 14.

64/ It appears that this is still the case. See "Ninos Ashaninkas mueren de hambre", La Republica, 18 August 1995.

65/ For the specific effects of long-term fear on psychological well-being see Coordinadora Nacional de Derechos Humanos, Salud Mental y Víctimas de la Violencia Política (1994).

66/ See Programa Salud Básica para Todos (document on file with the secretariat) (August 1995).

67/ Information provided to the Representative on the health situation in Junin by the Health Sector director (on file with the secretariat).

68/ USCR report May 1991.

69/ One organization which promotes projects for provision of diagnostic and preliminary psychological assistance for children in schools, hospitals, etc., with specific references to cases of displacement, suggests that at all stages of displacement the child should be encouraged to talk about his/her experiences and be told why displacement has been necessary and what he/she can expect in the near future. See PASMI (Programa de Atención en Salud Mental Infantil) publications.

70/ CEDAPP, "La Problemática de la Niñez Desplazada de Zonas de Emergencia", Lima, May 1993.

71/ Survey undertaken by the Asociación Jurídica pro Dignidad Humana - Huanuco in 1995.

72/ DS 005-91-AG.

73/ A government report, for instance, notes that communal labour is a very important component of farming, one of the main features and economic activities of the indigenous communities of the sierra. Communal labour is a form of labour that stems from the Inca period and consists of an equal exchange of services and goods. It has traditionally been used for the construction and maintenance of a complex system of "terracing" that prevents soil erosion and enables farming in the highlands. See HRI/CORE/1/Add.43, paras. 10 et seq.

74/ Mineral exploitation remains a prerogative of the State.

75/ Illicit coca production and drug trafficking sustain 300,000 peasants with an estimated overall income of US$ 8 million per year. See also UNDCP activities in Peru 1984-1993.

76/ One reason for which the colonos are actually more involved with illegal coca growing may be that they are not familiar with the farming technology suitable for the tropical ecology of the selva areas. See UNDCP, op. cit.

77/ Information provided to the Representative on the health situation in Junin by the Health Sector director (on file with the secretariat).

78/ COTADENA, op. cit.

79/ Ibid.

80/ Congreso Constituyente Democrático y Organizacion Internacional para las Migraciones, Proteccion y Assistencia a los Desplazados Internos del Perú (June-August 1994), and Programa de Transferencia Organizada para Desplazados Internos en el Perú (December-March 1995) (hereafter IOM 1994 study and IOM 1995 study respectively).

81/ See IOM 1994 study, p. 32.

82/ UNHCR report, op. cit., and Comisión Andina de Juristas y ACNUR, Estudio de Identificación de Pequeños Proyectos de Generación de Ingresos con Familias Desplazadas por Violencia Política (May 1994).

83/ See DECAS, Conclusiones: 1er Congreso Departamental de Comités de Autodefensas Antisubversivas de Ayacucho (September 1993).

84/ Comité de Coordinación Interministerial del Par, Programa de Apoyo al Desarrollo Local, a la Consolidación de la Paz y al Repoblamiento, op. cit. p. 5, quoting CEPRODEP estimates (March 1995).

85/ Carol Graham, Safety Nets, Politics and the Poor, pp. 83 et seq. (Washington, D.C., 1995).

86/ Eleventh periodic report of Colombia to CERD (CERD/C/225/Add.3), 1994; the CORE document says the Commission was created in 1990. The Comisión Técnica was formed by ministerial resolution No. 229-91-PCM of 6 August 1991.

87/ CERD members were concerned that while measures had been taken which were designed to promote development in the areas inhabited by indigenous communities, it was unclear what measures had been taken to resolve the problems of disadvantaged districts, such as shantytowns, and for the benefit of children of poor families compelled to work on the streets or in mines, or of especially poor families.

88/ IOM 1994 study, op. cit., p. 20.

89/ For instance, see publications of the Proyecto Procivismo, Ciudadanos para la Paz and the Colegio de Abogados de Lima.

90/ USCR report, May 1991, op. cit.

91/ UNHCR's Operational Experience with Internally Displaced Persons, UNHCR, September 1994, p. 34.

92/ The consultancy was undertaken by Giulia Tamayo and José María García Ríos and is on file with the Secretariat.

93/ IOM, op. cit.

94/ See OXFAM Tour Report by Ilana Benady and David Huey, Between Two Fires: Oxfam's Programme in Peru (March 1995).

95/ See Embajada Real de Los Paises Bajos, op. cit.

96/ Since his mission, the Representative has received information to the effect that some of the persons he met with, members of human rights NGOs, have received anonymous death threats. The Representative hopes that security will be provided to these persons, as appropriate.

97/ See Marisol Rogríguez Vargas, Desplazados: Selva Central (Lima, 1993).

98/ One study in Lima showed that 42.8 per cent of the displaced were illiterate, while another 35 per cent had completed only primary education.

99/ UNHCR report, op. cit., pp. 92 seq.

100/ Problems identified were: lack of decentralization, slow administrative procedures, regional priorities not taken into account, etc. Information provided to the Representative on the health situation in Junin by the Health Sector director (on file with the Secretariat).

101/ PAR is focused almost exclusively on infrastructure and emergency needs rather than protection of civil rights, even though this component does appear in the report of the Comité de Coordinación Interministerial del PAR, op. cit. See also Contenido de la Exposición del Ing. Oscar Galdo Gómez, Jefe del PAR delivered on 13 August 1995, and compare with Ayuda Memoria "Com. Uchuraccay" prepared by PAR and Ayuda Memoria prepared by PAR-Oficina Zonal de Ayacucho (unpublished papers on file with the Secretariat).

ANNEX

POLITICAL MAP OF PERU

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